

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CARLOS KIDD

§

VS.

§

CIVIL ACTION NO. 9:15cv126

BRAD LIVINGSTON

§

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Carlos Kidd, an inmate confined within the Texas Department of Criminal Justice, Correctional Institution Division, proceeding *pro se*, filed this civil rights lawsuit against Brad Livingston. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

The defendant filed a motion asking that the case be dismissed. The Magistrate Judge has submitted a Report and Recommendation of United States recommending the motion be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. In a letter attached to a Notice of Appeal filed by plaintiff (doc. no. 48, p. 2), he indicates disagreement with the Report and Recommendation. The court will construe the letter as objections to the Report and Recommendation. The court must conduct a *de novo* review of the objections in light of the record and the applicable law.

The Magistrate Judge determined that this lawsuit should be dismissed pursuant to 28 U.S.C. § 1915(g). This determination was based on the following two conclusions: (1) plaintiff had previously had at least three lawsuits or appeals dismissed as frivolous or for failure to state a claim upon which relief may be granted and (2) plaintiff's allegations did not show he was in imminent danger of serious physical harm on the date he filed his complaint. The complaint was filed in August, 2015. The Magistrate Judge found that while plaintiff alleged he had been attacked by a fellow prisoner in January or February, 2015, and again several weeks later, he did not describe any further attacks prior to the filing of the complaint or provide any specifics concerning any threats

made against him in the 3-4 month period between the second attack and the filing of his complaint.

In his objections, plaintiff states his life is in imminent danger from prison gangs. He also states he was attacked by a fellow prisoner on August 21, 2017. However, as the Magistrate Judge stated, Section 1915(g) requires a showing that the plaintiff was in imminent danger of serious physical harm on the date he filed his complaint. Plaintiff's allegations of being attacked 3-4 months before the filing of the complaint, his conclusory allegations of being continually threatened and harassed, and his statement that he was attacked approximately two years after filing his complaint fail to satisfy this requirement.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. The defendant's motion to dismiss is **GRANTED**. A final judgment shall be entered dismissing this matter.

So Ordered and Signed

May 24, 2018



Ron Clark, United States District Judge